

Exhibit 3

UNITED STATES DISTRICT COURT NORTHERN DISTRICT
OF CALIFORNIA, SAN FRANCISCO DIVISION

CALIFORNIA BERRY CULTIVARS, LLC,)

Plaintiff,)

vs.) Case No.

) 3:16-cv-02477-VC

THE REGENTS OF THE UNIVERSITY OF)

CALIFORNIA, a corporation,)

Defendants.)

CONFIDENTIAL

THE REGENTS OF THE UNIVERSITY OF)

CALIFORNIA, a corporation,)

Cross-Complainant,)

vs.)

CALIFORNIA BERRY CULTIVARS, LLC,)

DOUGLAS SHAW, and KIRK LARSON,)

Cross-Defendants.)

VIDEO-RECORDED DEPOSITION OF PERSON MOST KNOWLEDGEABLE

FOR THE REGENTS

OF THE UNIVERSITY OF CALIFORNIA

MICHAEL CARRIERE

San Francisco, California

December 20, 2016

Transcribed by:

DENISE HERFT

CSR No. 12983

1 MR. CHIVVIS: Matthew Chivvis of Morrison
2 and Foerster, LLC for The Regents of the University
3 of California and the witness.

4 THE VIDEOGRAPHER: The court reporter --
5 the videographer will swear in the witness.

6 Sir, would you raise your right hand.
7

8 MICHAEL CARRIERE,
9 called as a witness, and having been first duly sworn
10 by the Videographer, was examined and testified as
11 follows:
12

13 MR. CHIVVIS: Just a comment for the
14 record, we're beginning a little bit late today due
15 to a mixup with the scheduling of a court reporter
16 and videographer. The deposition was scheduled to
17 9:00 a.m., we're proceeding at 12:18. The parties
18 have agreed that this deposition will proceed on
19 videotape and audio only to be transcribed after
20 the fact due to the inability to schedule a court
21 reporter for this proceeding.

22 Due to the fact that a court reporter will
23 not be present to ask for clarification if anything
24 was unclear coming out of the witness's mouth or
25 any of the conversation between the parties or

1 Q Has the University ever apart from this
2 litigation asserted to a third party that
3 benchmarking activities, as we just described them,
4 constitutes a breach of the grant of license as
5 described here?

6 A Well, if I can elaborate a little bit, I
7 can provide some context, it's known with our
8 licensed nursery that if they are approached by an
9 entity that is going to be conducting research like
10 benchmarking or maybe a trial to look at fumigant
11 efficacy or a University looking at flavor profile
12 or something like that, that such use needs to be
13 covered under a test agreement and that the nursery
14 should make it clear to the person that's
15 approached them that they need -- that entity needs
16 to approach the University to secure a test
17 agreement for that use.

18 Q Okay. When you say it's known to
19 nurseries, is that embodied in a written agreement
20 between the University of California and Lassen?

21 A That concept would be something that
22 nurseries have been made well aware of, say,
23 through public meetings to the point now. We have
24 a fairly stable cohort of nurseries that have been
25 with the University for sometime and there's an

1 institutional knowledge at those nurseries that
2 when somebody approaches them who is not a grower
3 for fruit production and is interested in accessing
4 plants from their nursery that the nursery should
5 contact us and the potential user should contact us
6 so a test agreement can be put in place.

7 Q Okay. Is that the policy embodied in a
8 written contract signed by the University and
9 Lassen Canyon?

10 A It's embodied in agreement with the
11 tester, and I would say that as we were discussing
12 earlier 2.1 through 2.4 read with the limitation in
13 2.5 is an embodiment of that concept.

14 Q Okay. So apart from this agreement is
15 there an agreement between the University and
16 Lassen, I understand they don't have test
17 agreements between the University and Lassen, is
18 there an agreement between University and Lassen
19 other than this agreement in writing signed by both
20 parties indicates that Lassen shall perform in
21 accordance with what you just described if a third
22 party comes to seek to use varieties for
23 evaluation, et cetera?

24 A No, it's a combination of the language
25 that's in the agreement and the understanding that

1 Lassen has about how appropriately to proceed when
2 they're contacted.

3 MR. LIPPETZ: Okay. Let's go off the
4 record.

5 THE VIDEOGRAPHER: Don't forget your
6 microphones, please.

7 This is the end of video one of Volume 1
8 of the deposition of Michael Carriere on
9 December 20th, 2016. The time is 2:12 p.m. We're
10 off the record.

11 (Recess taken from 2:12 until 2:20.)

12 THE VIDEOGRAPHER: This is the beginning
13 of video two of Volume 1 of the deposition of
14 Michael Carriere on December 20th, 2016. The time
15 is 2:20 p.m. We're back on the record.

16 BY MR. LIPPETZ:

17 Q You mentioned that the University had
18 conveyed its view that nurseries should arrange for
19 test agreements with third parties who wanted to
20 use Cultivars for evaluation through meetings or
21 presentations over the years; is that accurate?

22 A Not exactly. So we haven't signaled to
23 nurseries that they should be involved with putting
24 in place a test agreement, but that they should
25 notify the potential recipient that the recipient

1 to pull up the documentation, we can. You can ask
2 him questions about it.

3 MR. LIPPETZ: I appreciate it. Let me ask
4 my questions, please.

5 BY MR. LIPPETZ:

6 Q You said you spoke at conferences at this
7 time, what conferences did anybody from the
8 University speak at at which it conveyed its view
9 that its UC patented varieties should not be used
10 for breeding?

11 A I think it was a horticultural science
12 meeting, and I gave a presentation on the
13 strawberry licensing program, and I recall there
14 being an emphasis on this theme. You know, it was
15 pretty much, get the message out, let it be known
16 this is the UC Davis position and policy.

17 Q What time frame?

18 A Early 2000s.

19 Q And do you know whether representatives
20 from Driscoll were at this conference?

21 A It wouldn't surprise me. It was -- I
22 think it was in Sacramento so it was local,
23 relatively. That meeting is held around the
24 country at a horticultural focus. I think it
25 breeding session, breakout session on breeding, so

1 it was kind of a nice targeted audience for us to
2 be making this known. So it wouldn't surprise me
3 if Driscoll was there, but I don't recall
4 specifically if there was someone there from
5 Driscoll.

6 Q I think you made a statement that the
7 industry knows or knew or was conveyed the message.
8 Is the University certain that every member of the
9 strawberry industry knows that the University's
10 position is that its plants should not be used for
11 breeding?

12 A I mean, that's a kind of canvassing that I
13 think would be, you know, level of diligence to
14 canvas the 300 to 500 members of the industry, that
15 would be difficult to say like each individual in
16 the industry, but again, it's just in the ether.
17 It's known through outreach, through Doug Shaw and
18 his comments to industry members. I think it was
19 part of the reason why we might have had contact
20 from industry members seeking to clarify our
21 position because they had heard about it.

22 Q Okay. Has the University undertaken any
23 efforts to review publically filed patent
24 applications or patents to determine whether any
25 other companies besides the two examples I showed

1 include them, so the general theme is Europe and
2 the Mediterranean basin, Mexico, South America, and
3 some part of Asia.

4 Q The UC patented strawberries that --
5 well -- strike that.

6 Does Eurosimius grow patented UC
7 strawberries for fruit production?

8 A They are an agricultural focused company,
9 but they are not a grower in the way that a fruit
10 grower would be a grower.

11 Q Does Eurosimius propagate UC patented
12 varieties for sale to growers such as Lassen Canyon
13 does?

14 A So Eurosimius's business model is to be a
15 sublicensor of such rights, so Eurosimius is very
16 well familiar with propagation by nurseries, in
17 fact, their business model is to sublicense
18 nurseries to propagate plants, but they're not
19 specifically in the business themselves of
20 propagating plants.

21 Q And the time frame I want to focus on for
22 the purpose of these questions is 2012 through the
23 present; okay?

24 A Okay.

25 Q In that time frame the University had a

1 practice of releasing patented Cultivars first in
2 California and then two years later to the rest of
3 the world, is that generally right?

4 A Releasing for use in California, and then
5 two years later to the rest of the world including
6 the U.S. outside of California?

7 Q Correct.

8 A Yeah.

9 Q That's accurate?

10 A That's accurate.

11 Q And the agreement with Eurosimius
12 discusses and even defines, I think, the words
13 two-year -- two-year Cultivars; is that correct?

14 A I think it's a two-year delay cultivar.

15 Q Two-year delay cultivar.

16 A Yeah.

17 Q And is there a -- I will point you to
18 section 2.6, but if there's other sections I should
19 be aware of, please let me know. Does this
20 agreement have restrictions on Eurosimius's use of
21 these two-year Cultivars?

22 A This agreement does not grant rights to
23 the two-year delay Cultivars until a specific time
24 frame, which is the end of the two-year delay. The
25 use of Cultivars during the two-year delay period

1 A Okay.

2 Q So a two-year delay cultivar becomes a
3 licensed cultivar at the expiration of the two-year
4 delay, is that a fair way to characterize it?

5 A If I can take another look to make sure --

6 Q Sure.

7 A -- I'm answering with precision.

8 Yeah, I think that's right. So at the end
9 of the two-year delay, a two-year delay cultivar
10 becomes a licensed cultivar.

11 Q Is there a practice historically whereby
12 Eurosimius is allowed to themselves or their
13 sublicensees propagate two-year delay cultivars
14 prior to the expiration of the two-year period in
15 preparation for commercializing them in their
16 geographic regions?

17 A So two parts, one is there would be an
18 allowance for -- under our test agreement for
19 growing a given cultivar during its two-year delay
20 period. Sorry, I'm not tracking the second part of
21 your question.

22 Q So the test agreements you're saying that
23 the materials delivered to Eurosimius under a test
24 agreement that Eurosimius is led to propagate those
25 and multiply those for the sublicensees in

1 preparation --

2 A Right.

3 Q -- for releasing them commercially?

4 A So the preparation word, if I can focus on
5 that real quickly?

6 Q Uh-huh.

7 A So there's preparation in the sense that
8 use -- testing under the test agreement during a
9 two-year delay is preparation in the sense that it
10 positions Eurosimius and the University to know
11 something about how a two-year delay variety might
12 perform in a given setting, a given geography once
13 the two-year delay is over. So in that sense it's
14 preparation. But it shouldn't be read as
15 preparation in the sense that the test agreement
16 somehow allows a form of commercialization that
17 just leads, segues into the post two-year delay
18 period.

19 So it's preparation in the data gathering
20 market reconnaissance sense but not in the sort of
21 bulk-up sense.

22 Q So I'm focused more on the bulk-up sense.
23 So two years expire from the release of a cultivar
24 in California, Eurosimius is upon the expiration of
25 that two years, now is the chance to sell that in

1 Europe, are they permitted to have someone begin
2 multiplying those plants prior to the expiration of
3 those two-year period in preparation of those
4 sales?

5 A Multiplication can happen under a test
6 agreement, but there are strict revisions in the
7 test agreement that such plants be destroyed.

8 Q Right. Does Eurosimius have to start its
9 first propagation activities the day the two-year
10 delay expires --

11 A Yeah.

12 Q -- for its commercialization activities?

13 A Yeah, that's a commercialization activity,
14 which is not allowed until the expiration of the
15 two-year delay.

16 Q And so your understanding is that
17 Eurosimius either themselves or their authorized
18 sublicensees begin propagating the material upon
19 the expiration of the two-year delay?

20 A Outside of the context of the test
21 agreement.

22 Q Correct.

23 A Yeah.

24 Q And so isn't there, then, a delay until
25 there's enough of that plant material for

1 would be through them and to the extent that
2 Eurosimum might put the two parties in contact to
3 know that a nursery in California has plants of a
4 new variety and a grower in Spain is interested in
5 growing some of them, but then the business
6 arrangement goes between the nursery in California
7 and the grower in Spain.

8 Q Has the University ever allowed Eurosimum
9 to commercialize plants that it received for the
10 first time under a test agreement?

11 A That has expressly not been something that
12 would be allowed. We -- the University's intent in
13 the two-year delay is that commercialization
14 activities not take place during the two-year
15 delay.

16 Q Let me rephrase the question, has the
17 University ever allowed Eurosimum to begin
18 commercializing plants after the expiration of the
19 two-year delay where those plants were propagated
20 from plants that first received under a test
21 agreement?

22 A Eurosimum was not allowed to do that.

23 Q Has the University ever been aware that it
24 had done it whether it was allowed to or not?

25 A We're not aware that they have done it.

1 Q Has the University ever provided
2 permission to Eurosimius to do that?

3 A No. In fact, they were on notice that
4 they were not to do that.

5 Q You've given us in tab 5 an example of --
6 I say "example" because personally I've seen a
7 number of test agreements between the UC and
8 Eurosimius, was there a reason that this one was
9 chosen?

10 A They are similar in kind, so this one
11 doesn't stand out as a unique -- hold on just a
12 sec. I mean, there's a uniqueness, of course, in
13 the selections that are included but otherwise the
14 language for quite sometime has tracked very
15 closely overtime, so the uniqueness exists and the
16 varieties that are included are selections.

17 Q Going back to -- well, actually, talking
18 about either the exclusive license agreement or the
19 test agreement, in this case the -- there are facts
20 relating to the use of UC patented varieties that
21 had been released for commercialization in Europe,
22 not two-year delay cultivars, but actual released
23 in Europe --

24 A Post two-year delay?

25 Q -- post two-year delay.

1 plant patent, and so that answer to that is no. It
2 just doesn't speak to it.

3 BY MR. LIPPETZ:

4 Q Okay.

5 MR. CHIVVIS: Greg, are we getting back
6 into a topic I can say he's designated on so we can
7 say it's University testimony again here?

8 BY MR. LIPPETZ:

9 Q So, Dr. Carriere, if you would like at the
10 agreement under tab seven of your binder,
11 Exhibit 276, and yes, this is a different topic.
12 This is a document signed by Dr. Shaw back in 1986;
13 correct?

14 A 1986, yes.

15 Q And is the University's understanding that
16 this is the patent agreement that was operable for
17 the entire period Dr. Shaw worked for the
18 University?

19 A Let's see, so yes, this is '86, which was
20 the time he began employment as I understand, and
21 then operative throughout his time of employment,
22 yes.

23 Q The patent agreement -- let me ask this,
24 when an employee of the University makes an
25 invention, the intellectual property rights in that

1 invention are initially held by the inventor;
2 correct?

3 A Around intellectual property?

4 Q Correct.

5 MR. CHIVVIS: Objection; calls for a legal
6 conclusion.

7 You can answer.

8 THE WITNESS: So I know there are, you
9 know, state statutes around work product and
10 intellectual property, and both of those I
11 understand speak to ownership by the employer, in
12 this case the University.

13 BY MR. LIPPETZ:

14 Q So let me ask it a different way; an
15 employee of the University that invents something,
16 that invention can transfer to the University
17 either pursuant to a law or pursuant to a contract;
18 is that correct?

19 MR. CHIVVIS: Objection; calls for a legal
20 conclusion.

21 THE WITNESS: Yeah, I -- so I have some
22 understanding of -- of the area around California
23 labor law and entitlement of employers to the work
24 product of employees, and my understanding there is
25 that the work product is the -- it's owned by the

1 employer.

2 BY MR. LIPPETZ:

3 Q And that, in part, is covered by the
4 provision cited here Labor Code section 2870;
5 correct?

6 A Here?

7 Q In the agreement we were looking at under
8 tab 7 on the second page.

9 A Okay.

10 Q It's set forth toward the word "notice" on
11 the bottom of the second page.

12 A Thanks. I see 2870 in the middle of the
13 section?

14 Q Yes, that's what I was referring to.

15 A Okay.

16 Q Does the University have any position on
17 whether the provisions of Labor Code 2870 apply to
18 inventions created by Dr. Shaw or Larson while they
19 were at the University?

20 MR. CHIVVIS: Objection; calls for a legal
21 conclusion, also completeness. This is not the
22 complete 2870 listed here, if you would like to
23 take out the statute --

24 THE WITNESS: Again, my understanding is
25 that based on 2860 and 2870, that ownership rests

1 with the University.

2 BY MR. LIPPETZ:

3 Q Does the University have any understanding
4 of whether or not Drs. Shaw or Larson were required
5 to have been hired to invent in order for those
6 labor code provisions to apply to their inventions?

7 A I'm not familiar with that concept, but
8 I'm not aware of any caveats to the Labor Code that
9 would suggest there was some entitlement based on
10 some other theory outside of the entitlement that
11 the employer has.

12 Q In the fourth paragraph down under the
13 heading "Patent Agreement" on the second page, the
14 bottom box, the first sentence states that in the
15 invent any such invention shall be deemed by the
16 University to be patentable and the University
17 desires pursuant to determination by University as
18 to its rights and equities therein to seek patent
19 protection thereon, I shall execute any documents
20 and do all things necessary at University's expense
21 to assign to University all rights title and
22 interest therein and to assist University in
23 securing patent protection thereon; do you follow
24 that?

25 A Yeah.

1 which he would request that the patent office issue
2 the patent that's being requested?

3 MR. CHIVVIS: Objection; vague.

4 THE WITNESS: I think this agreement is
5 looking to affect the outcome you've described.

6 BY MR. LIPPETZ:

7 Q And Douglas Shaw would be an inventor on
8 that patent; correct?

9 A He would be an inventor.

10 Q And if as the inventor he did not believe
11 that there was an invention in this application
12 that merited patent issuance, he shouldn't sign
13 this document; correct?

14 A I think there's a lot of issues wrapped up
15 in that question. The prosecution of intellectual
16 property resides in a tech transfer office so
17 questions about, you know, would this issue, could
18 it issue as the appropriate approach live with tech
19 transfer, and I think that would not be a reason to
20 not assign -- not sign this agreement.

21 Q So the University is asking Doug Shaw to
22 sign an assignment even if Doug Shaw does not
23 believe there's a patentable invention in the
24 application?

25 MR. CHIVVIS: Objection; asked and

1 answered.

2 THE WITNESS: He has an obligation as to
3 possibly patentable, the University thinks this is
4 patentable, but even if that were a question, it
5 wouldn't be a question for Doug Shaw.

6 MR. LIPPETZ: We have to change tape.

7 THE VIDEOGRAPHER: Don't forget your
8 microphones, please.

9 This is the end of video number two of
10 Volume 1 on the deposition of Michael Carriere on
11 December 20, 2016. The time is 4:25 p.m. We're
12 off the record.

13 (Recess taken from 4:25 until 4:34.)

14 THE VIDEOGRAPHER: This is the beginning
15 of video number three of Volume 1 of the deposition
16 of Michael Carriere on December 20, 2016. The time
17 is 4:34 p.m. We're back on the record.

18 THE WITNESS: So, Counsel, I have one item
19 that came up during the break and maybe chalk this
20 up to a rookie mistake, but when you were asking
21 about claims around breach of the patent
22 acknowledgement, of course the obvious thing would
23 have been to just go to the claims, so I would like
24 to take the opportunity to flag related items in
25 that universe that I was trying to capture. The

1 course, this document unproduced. We do have
2 possession of this particular document but, you
3 know, we do ask that you produce versions of the
4 documents in the deposition.

5 THE WITNESS: Third sentence, Due to the
6 fact that plant patents are restricted to one plant
7 and, therefore, one invention it is improper to
8 claim more than one plant in an application.

9 BY MR. LIPPETZ:

10 Q And the patent office has, therefore,
11 asked the University to submit separate
12 applications for each claim variety in this
13 application; correct?

14 MR. CHIVVIS: Objection; misstates the
15 document.

16 THE WITNESS: What they asked for, if I
17 may have a look?

18 BY MR. LIPPETZ:

19 Q Uh-huh.

20 A So the summary of this paragraph -- is
21 that an approach I can take?

22 Q Sure.

23 A Is that MOFO, Michael Ward, had a
24 discussion with the examiner whereby the examiner
25 asked the applicant to choose one plant distinct

1 from it asking that they all be separated out, so
2 we feel it's not improper, we have a path forward
3 for continued prosecution for continuing to keep
4 the examiner -- the application alive and going
5 forward and that was with the concurrence of the
6 examiner that we proceed in that fashion.

7 Q Okay.

8 A We feel like we have an appropriate proper
9 path forward after Mike Ward having had a phone
10 discussion with the examiner.

11 Q And the University will be electing one of
12 the 168 as their initial matter to continue with
13 with this application; correct?

14 MR. CHIVVIS: Objection; calls for
15 speculation.

16 You can testify if you know.

17 THE WITNESS: That's -- that would --
18 that's an approach that's contemplated to keep the
19 application alive.

20 BY MR. LIPPETZ:

21 Q Okay. Which plant is the University going
22 to submit to the patent office?

23 A So we have some time to respond to that
24 with the office action, and I'd be speculating
25 about which one it is at this point.

1 made a request for plant patent.

2 Q So Dr. Shaw was discussing as an invention
3 the use of these 180 germplasm for breeding under
4 utility patent or alternatively for a licensing as
5 tangible research property; correct?

6 A So here we have reference to Doug's
7 request for consideration of utility patent so did
8 the TRP idea come from Doug or otherwise? Maybe
9 the document will be a dispositive on that.

10 Q If you look at the third full paragraph.

11 A Oh, yeah, okay. So it talks about TRP or
12 under utility patent?

13 Q Right.

14 A Okay. Yeah.

15 Q The University elected to pursue by filing
16 a provisional patent application on the 160 --
17 strike that. Let me get this clear. The original
18 provisional patent application we've been talking
19 about was on 169 varieties; is that correct?

20 A That makes sense because it's 168 now, and
21 Cabrillo was capped off, carved out.

22 Q So one became a plant patent and then 168
23 are still pending; correct?

24 A Cabrillo is, I understand, still pending
25 as well.

1 Q So it's the subject of a separate
2 application than the 168?

3 A It's a separate application.

4 Q And the University did not file any patent
5 application seeking utility patent on 180 genotypes
6 discussed in this letter nor on the 168; correct?

7 MR. CHIVVIS: Objection; compound; vague.

8 THE WITNESS: So there are two questions
9 buried.

10 BY MR. LIPPETZ:

11 Q I'll split them up.

12 A Okay.

13 Q The University did not seek a utility
14 patent on the 180 genotypes discussed as being
15 submitted by Douglas Shaw in 2013; correct?

16 A Correct.

17 MR. CHIVVIS: Objection -- you got to give
18 me a moment to object.

19 BY MR. LIPPETZ:

20 Q And the University did not seek a utility
21 patent on the 168 that are currently pending in
22 front of the patent office; correct?

23 MR. CHIVVIS: Objection; vague.

24 THE WITNESS: The 168 there was not a
25 utility patent sought on the 168.

1 because we haven't had an opportunity to or a
2 reason to, as to would we or would we continue to
3 be diligent and vigilant about that, yes.

4 Q Switching topics, does the University
5 believe that its United States patents for
6 strawberries give it the right to prohibit others
7 from using its plants for sexual breeding in the
8 United States?

9 A Sorry, I need to shift gears a little bit.
10 Okay. So we're in that realm now, under its United
11 States plant patents, the position of The Regents
12 is that we do, indeed, have the ability to prohibit
13 the use of our patented lines for breeding, for use
14 in breeding.

15 Q And, in fact, the University obtained
16 opinion letters from outside counsel regarding the
17 use of UC patented strawberry plants for sexual
18 breeding in the United States; correct?

19 A Legal opinions, yes.

20 Q And we discussed earlier communication
21 correspondence with plant sciences, relating to
22 this topic of the use of UC patent varieties for
23 breeding; do you recall that discussion we had?

24 A (Inaudible response.)

25 Q Part of the obtaining of opinion letters

1 Q So if a UC variety that was -- as to which
2 patent protection had been sought in the U.S. but
3 not yet obtained was used for breeding in Spain
4 with the resulting seeds imported into the U.S.,
5 that couldn't be patent infringement of the U.S.
6 patent because there wasn't a patent yet, is that
7 consistent with your understanding?

8 A So what I know about plant patents, and
9 this is really more a matter for patent attorneys,
10 is the bundle of rights that are available upon
11 issuance there is some capacity to reach back in
12 time with respect to perhaps with damages, I'm not
13 sure they have that right, but I know there's some
14 aspect whereby even pre-issuance there are some
15 retroactive rights that the patent holder has.

16 Q And I'm not trying to get into the legal
17 particulars of pre-issuance damages, so we can move
18 on.

19 We saw documents before about that the --
20 Dr. Shaw's submission of 180 plants, which
21 ultimately resulted in, led to, not sure what the
22 right word is, the University sought patent
23 protection on 168 of those and that patent
24 application is still pending. Who at the
25 University made the decision to seek plant patent

1 protection for those 168 varieties?

2 A So the general authority for such a
3 decision resides within the tech transfer office.
4 As we know from examination of documents earlier
5 around meeting that Clint and I attended with the
6 department of Plant Sciences, a variety release
7 committee, there was input from that group with I
8 would say in that meeting some pushback from Clint
9 in particular, and I agreed in terms of the
10 suitability of the U.S. plant patent as an approach
11 over the utility and the TRP approach that came up
12 in that meeting, so we were listening to
13 stakeholders in that meeting but also providing
14 some counter-bailing view, maybe some pushback in
15 that meeting that the ideas that had come into that
16 forum were -- they were given sort of an advance
17 signal that tech transfer's choice would likely be
18 a U.S. plant patent, and we weren't sort of in
19 concurrence with the notion of that group at that
20 time, and that's what came to pass.

21 So the tech transfer exercised -- office
22 exercised its autonomous capacity to choose the
23 most appropriate path of intellectual property
24 protection for this particular complement of
25 varieties, so it resided in tech transfer sort of

1 collaboratively with the director and with my
2 supervisor and -- but within the confines of tech
3 transfer, of course, with, then, the approval of
4 the Dean that we go forward in that fashion as
5 well, ultimately.

6 Q So at the time that tech transfer was
7 making the decision about what type of intellectual
8 property protections to use, had the Dean's office
9 already rejected in writing the Plant Science
10 department proposal to treat the germplasm's TRP?

11 A So my recollection of the sequence was the
12 Dean's office was saying no to the TRP, and then
13 was there overlap with discussions around plant
14 patenting, we would have let the Dean's office know
15 of our analysis that suggested plant patenting was
16 in our view the best approach, but I would have to
17 go to a white board or something and sketch out the
18 time frame to really know when sort of one
19 discussion ended and the next one started, but it
20 was pretty contemporaneous there when those things
21 were happening.

22 Q Did tech transfer -- prior to the Dean
23 notifying Plant Sciences that she was rejecting
24 their proposal, did tech transfer go back to Plant
25 Sciences and inform them that they were going to be

1 transfer.

2 Q And who decides what type of intellectual
3 property or patent protection to pursue within the
4 University of California's Davis campus?

5 A Same answer, it would be innovation
6 access, tech transfer office.

7 Q If an inventor designates a particular
8 type of intellectual property protection he or she
9 would like to pursue, does that bind the tech
10 transfer office?

11 MR. LIPPETZ: Objection; vague;
12 speculative.

13 THE WITNESS: No, it doesn't bind the tech
14 transfer office. An inventor can certainly express
15 their interests and will be open to listening to
16 their view but ultimately the authority resides
17 with the tech transfer office, and the inventor's
18 view certainly does not bind the tech transfer
19 office.

20 BY MR. CHIVVIS:

21 Q Dr. Carriere, is an ROI or record of
22 invention required to proceed with patenting?

23 A No, record of invention is not required to
24 proceed with patenting.

25 Q Earlier today there was some discussion of

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CERTIFICATE

OF

CERTIFIED SHORTHAND REPORTER

I, the undersigned, Certified Shorthand Reporter of the State of California do hereby certify:

That the foregoing proceedings were taken before me at the time and place therein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative of employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name

<%signature%>

Dated: December 23, 2016

Certificate Number 12983

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ERRATA SHEET

Case Title: California Berry Cultivars, LLC v. The Regents of the University of
California (U.S.D.C. N.D. Cal. Case No. 3:16-cv-02477-VC)
Testimony of: Michael Carriere
Date Taken: December 20, 2016

page 19 line 22 – strike “right” and “industry”
page 20 line 2 – replace “product” with “products”
page 21 line 23 – replace “negligence” with “negotiation”
page 22 line 12 – replace “in” with “with”
page 22 line 14 – replace “agreement” with “agreements”
page 33 line 5 – spelling of “Camarosa” (here and throughout document)
page 44 line 8 – replace “supportive” with “supportive of”
page 53 line 3 – strike “its”
page 54 line 6 – spelling of Eurosemillas (here and throughout document)
page 68 line 4 – insert “a” after “of”
page 70 line 24 – replace “pro generator” with “progenitor”
page 71 line 7 – strike “he”
page 71 line 11 – replace “advising” with “anthropomorphizing”
page 71 line 17 – replace first “I” with “it”
page 72 line 13 – replace “lists” with “list”
page 80 line 1 – replace “not” with “that”
page 80 line 2 – replace “slash” with “ask”
page 98 line 14 – replace “its” with “this”
page 101 line 24 – replace “at” with “has”
page 107 line 11 – strike “it”
page 107 line 19 – insert “a” after “it’s”
page 107 line 19 – replace “to” with “that”
page 111 line 6 – replace “revisions” with “provisions”
page 116 line 23 – invert “topic larger”
page 121 line 5 – replace “pro-generator” with “progenitor”
page 122 line 21 – replace “explain” with “explained”
page 122 line 21-22 – replace “link the” with “linked to”
page 125 line 11 – insert “to be” after “understand”
page 129 line 8 – replace “independent” with “individual”
page 130 line 1 – replace “that” with “the”
page 134 line 9 – replace “has” with “is”
page 135 line 9 – strike “of”
page 135 line 10 – replace “that’s” with “that”
page 146 line 12 – replace “got” with “need”
page 151 line 2 – replace “that’s” with “that it’s”
page 155 line 3 – replace “absolute” with “absolutely”
page 155 line 7 – replace “but” with “it”
page 168 line 25 – insert comma after “plant”
page 176 line 9 – strike “a”

page 182 line 22 – replace “hospices” with “auspices”
page 186 line 2 – replace “wouldn’t” with “would”
page 186 line 3 – replace “we had to misrepresent” with “had we misrepresented”
page 188 line 8 – strike “the”
page 191 line 1 – insert “different” after “entirely”
page 191 line 1 – replace “that” with “thats”
page 191 line 22 – invert “might we”
page 192 line 23 – invert “the University” and “within”
page 192 line 23 – replace “University” with “University’s”
page 192 line 24 – strike “the”
page 194 line 18 – replace “appropriately” with “inappropriately”
page 203 line 11 – insert comma after “University”
page 209 line 13 – strike “then”
page 211 line 14 – insert “with” after “disagreed”
page 218 line 5 – insert “the” after “around”
page 218 line 14 – replace “counter-bailing” with “countervailing”
page 228 line 3 – replace “just” with “it’s”
page 229 line 3 – strike “it”
page 230 line 20 – replace “would” with “wouldn’t”
page 240 line 12 – insert “a” after “for”
page 240 line 12 – replace “and” with “in”
page 244 line 23 – replace “charge” with “chart”
page 244 line 23 – replace “the” with “they”
page 247 line 9 – replace “their” with “there”
page 250 line 23 – replace “intend today” with “intended to”